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(2)

Supreme Court, U.S.
FILED
OCT 08 2013
OFFICE OF THE CLERK

No. 10-0321

In the Supreme Court of the United States

Guy W. Parker d/b/a/ Parker International,
Petitioner,

v.

Michael B. Donley, Secretary of the Air Force.
Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit

SUPPLEMENTAL BRIEF INTERVENING MATTER PETITION FOR WRIT OF CERTIORARI

Guy W. Parker
Contract FA8621-04-D-6250
14924 Conchos Dr.
Poway CA 92064
858-486-6469

THE U. S. AIR FORCE ASKS THE TRIBUNALS

QUESTION 1: CDA § 6 (A) CO OF RECORD

– Is a Pub. L. 95-563 amended (CDA) contractor bound by CDA § 6 and 48 C.F.R. § 4.101 to only recognize the agency contracting officer whose name is typed and signed on the contract as the agency Contracting Officer of Record (CO). Is a SF30 bilateral signed agreement or bilaterally agreed unilateral agreement required to install a new agency CO of Record? [CDA is defined as Pub. L. 95-563 amended: 41 U.S.C. 601-612 not positive law] [1]

QUESTION 2: CDA § 6 (D-E) ADR REQUESTS

– Does Pub. L. 95-563 amended (CDA) § 6 (d)-(e) require a written answer upon contractor request to the CDA § 6 48 C.F.R. § 4.101 Contracting Officer of Record (CO)? When a contract term states "at the request of either party, delays impacting the program or contractor shall be resolved by ADR" is ADR mandatory on request of either party? When the 48 C.F.R. § 4.101 CO provides no Pub. L. 95-563 amended (CDA) § 6 (e) written ADR answer is statutory law violated and the contract breached?

QUESTION 3: DECLARATORY JUDGMENT

– What statute(s) provides statutory 1978 92 Stat. 2383 Armed Services Board of Contract Appeals (ASBCA) and Court of Federal Claims (USCOFC) Pub. L. 95-563 amended (CDA) declaratory judgment jurisdiction, injunctive relief jurisdiction, and declaratory judgment authority to change the CDA § 6(a) 48 C.F.R. § 4.101 CO of Record?

QUESTION 4: CONGRESSIONAL BREACH

– Why does a contractor have to wait until after the performance period to file a Pub. L. 109-364 § 832 120 Stat. 2331 Congressional breach claim?

RULE 14.1(b) STATEMENT PARTIES

Guy W. Parker — Petitioner
14924 Conchos Dr.
Poway CA 92064

Michael B. Donley — Respondent
1670 Air Force Pentagon
Washington, DC 20330

INTERESTED PARTIES

AFMC/PKPB Michael L. Grove agrees he is the AFMC/ASC/YW 48 C.F.R. § 4.101 CO of Record for this ASC/YW Predator Unmanned Air Vehicle Contract FA8621-04-D-6250, he was moved to HQ in 2005, and ASC/YW was decommissioned in 2005.

AFMC/ASC Patsy J. Reeves agrees she is the HCA Director of Contracting and is the 48 C.F.R. § 1.6 CO of Authority for Contract FA8621-04-D-6250.

ASC/677th Betty W. Clingerman agrees she was the F33657-01-D-2077 0007 competing contract delivery order officer, does not hold an AFMC/ASC issued SF1402, has a blanked SES/DCS organization SF1402, and states in her notarized document she is the CO by "self assignment" "implied consent".

Alan C. Gaudette agrees he was the CO representing AFMC sole source contracts 1998–2001 upon which follow-on FA8621-04-D-6250 is based.

RULE 29.6 STATEMENT
CORPORATE DISCLOSURE STATEMENT

The real petitioner's name is in the caption, a California citizen sole proprietor not a corporation. The agency disputes well settled plain language CDA § 6 (a) law, 48 C.F.R. § 1.6, § 4.101 regulations, and contract terms of this five-year negotiated sole source contract follow-on, not closed, spanning 1998-2008.

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"As set forth in the regulations, a "decision" must include five components: "(i) Description of the claim or dispute; (ii) Reference to the pertinent contract terms; (iii) Statement of the factual areas of agreement and disagreement; (iv) Statement of the contracting officer's decision, with supporting rationale;" and **(v) a paragraph advising the contractor of its appeal rights and the requirements for filing an appeal.** 48 C.F.R. § 33.211(a)(4) (2000)." PDF P. 22 at: http://www.cafc.uscourts.gov/images/stories/opinions-orders/03-1461.pdf.

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No statues or regulations exist to change the CDA § 6 Contracting Officer of Record by implied consent. Michael L. Grove remains the CDA § 6 Contracting Officer of Record for Contract FA8621-04-D-6250. No such implied consent was/is provided. No AFMC/ASC SF 1402 Letter Termination of Contracting Office delegated authority exists for Michael L. Grove in accord with 48 C.F.R. § 1.603-4.

No implied consent, statues, or regulations exist to place bitmap icon photo image dates and signatures on Case Nevada Court CM/ECF Case 2:08-cv-01200-LDL-LRL Documents 83 and 84. The bitmap icon photo image dates and signatures floating above CM/ECF Docket Documents 83 and 84 make both documents unsigned. A printout will give "illusion only" that Documents 83 and 84 were signed. Those bitmap icon photo image signatures are not digitally certified. The judge did not enter the documents into CM/ECF docket.

No implied consent, statues, or regulations exist allowing the (Acting) United States Attorney General the right to docket an unsigned Supreme Court Waiver. There is no signed waiver, the (Acting) United States Attorney General defaults with no Response provided in the time allowed.

No implied consent, statues, or regulations provide Betty W. Clingerman an "ALL USAF" SF1402 Certificate of Appointment. Her blank organization 1992 SF1402 provides no delegated CO Authority beyond ASPR contracts prior to 1992 she may have been the Contracting Officer of Record.

No implied consent authority is assumed / provided.

SUPPLEMENTAL BRIEF
INTERVENING MATTER

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs: "Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing." [E6]

Due to the extraordinary importance of the four questions presented to all government contractors, an intervening matter not available at the time of the party's last filing is provided herein supporting reasons why this petition should be granted. An intervening 23SEP2010 Nevada Court Judgment is presented. The order and judgment are not signed.[E2]

The case closed 24SEP2009. One year later summary judgment was entered with genuine material facts in dispute. Jury trial was requested, was required, and was ignored. The Nevada court did not have subject matter jurisdiction.

In compliance with the case Documents 83 and 84, Congressional representatives determined UAV-MTT-001, 002, 003, 004, 005, 006, 007, and 008 parts were illegally purchased by ACC/TRSS Det 1 Luke AFB using ~$250K of Operations and Maintenance 1998 funds. A U.S. representative confirmed this contract is not closed and turned over the equipment to this contractor as is required by the contract terms to retain configuration control of the UAV-MTT-001, 002, 003, 004, 005, 006, 007, and 008 Government Furnished Property (GFE) until Termination for Convenience 48 C.F.R. 49.1 contract closeout, wherein the GFE property will turn over to Congressional representatives for disposition.

JUDGMENT 23SEP2010 COMPLIANCE

A U.S. representative confirmed UAV-MTT-001, 002, 003, 004, 005, 006, 007, and 008 is Government Furnished Property (GFE) until Termination for Convenience 48 C.F.R 49.1 contract closeout:

A: FA8621-04-D-6250 Attachment 8 Contractor Requirements, Conditions And Assumptions ¶ 1.5 Physical Location, Identification, Fire, Safety, and Security:

"Configuration of the Predator MTT System shall be the responsibility of this contract site manager. All eight (8) Predator MTT Systems shall remain under configuration control of this contractor site manager *for the duration of the contract*." See A21 P. 84.

B: FA8621-04-D-6250 Attachment 1 ¶ 2.0 Tasks:

"*The contractor shall provide on-site and off-site support* of the MTTs at ISAFAF, NV; Nellis AFB, NV; and Luke AFB, AZ. Tasks performed above and beyond the scope of the active delivery order(s) will not be reimbursed by the government, and are considered to be done at the contractor's risk."

C: FA8621-04-D-6250 Attachment 1 ¶ 1.2:

"The contractor shall provide the government with the opportunity to negotiate purchase of these data rights at the completion of the contract."

D: Contract FA8621-04-D-6250 has not been closed.

The selection of the phrase "*for the duration of the contract*" as opposed to "*the performance period of the contract*" was mutually negotiated into FA8621-04-D-6250 by this contractor and the 48 C.F.R. § 4.101 Contract Officer of Record Michael L. Grove, witnessed during negotiation by Alan C. Gaudette.

NEVADA CASE USDOJ ARGUMENT

Letter 12FEB2007 does not state it is a Final Decision and is without a Notice of Appeal. E4 The USDOJ asserts the letter is a CDA § 6 (a) Final Decision not appealed therefore the Nevada Court has CDA § 6 (b) jurisdiction. The USDOJ argued *Placeway Const. Co. v.U.S.*, 920 F.2d 903, 907 (Fed. Cir.1990) provides a Final Decision with Notice of Appeal is not required. The Court of Appeals for the Federal Circuit superseded *Placeway* by *England v. Sherman R. Smoot Corp.*, 388 F.3d 844, 849 (Fed. Cir. 2004) precedent. E3 The opinion and judgment are moot and void. In this case, the Nevada court did/does not have CDA § 6(b) subject matter jurisdiction.

The Nevada Court and the USDOJ confirmed the ASC/677th Letter 12FEB2007, not party to this ASC/YW contract, is the sole basis of their Nevada Court asserted P. L. 95-563 amended (CDA) § 6(b) jurisdiction. ASBCA confirmed the Rule 4(a) and Rule 4(b) Appeal files are accepted as evidence. The evidence content was provided to the Nevada court:

1) Letter 12FEB2007 was written by a competing contract delivery order officer without an AFMC/ASC issued Certificate of Appointment;

2) That letter does not state it is a 48 C.F.R. § 33.211 Final Decision and has no 48 C.F.R. § 33.211 (v) Notice of Appeal confirmed required by the U.S. Court of Appeals for the Federal Circuit in 2004. E3

3) That "AF letter dated 12 Feb 07 is a [competing contract] CO demand letter to return government property; it is not a CO final decision nor is it a decision on a claim; therefore all references to 48 C.F.R. are not applicable." Signed by letter author Betty W. Clingerman, received ASBCA recorder.E5

PUBLIC LAWS (STATUTES)

P. L. 95-563 amended § 6 DECISION BY THE CONTRACTING OFFICER (41 U.S.C. § 605):

(a) Contractor claims: "All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to *the contracting officer* for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by *the contracting officer*. ... The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and *shall inform the contractor of his rights* as provided in this chapter. ..." See A27 Page 19.

REGULATIONS

48 C.F.R. § 4.101 Contracting officer's signature: "Only contracting officers shall sign contracts on behalf of the United States. *The contracting officer's name* and official title shall be typed, stamped, or printed on the contract."

48 C.F.R. § 33.211 Contracting officer's decision: "(4)(i) Description of the claim or dispute; 4(ii) *Reference to the pertinent contract terms*; **(4)(v)** *Paragraph substantially as follows:* This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals ..." See A28 Page 20.

ADDITIONAL CONTRACT CLAUSES

Lt Col James Gear is the PTSWG Project Officer. See A29 Page 22.

AFFiDAVIT LT COL JAMES GEAR USAF

The following affidavit was received by PI and USCOFC through USPS mail 16th December 2006.

"I am Lt Col James R. Gear Jr. and I am the Commander of the 11th Reconnaissance Squadron, Creech Air Force Base, Indian Springs, Nevada."
"The 11th Reconnaissance Squadron's (11 RS) mission is to train combat ready Predator pilots and sensor operators who, after graduation, are directly assigned to the squadrons engaged in combat in support of Operations ENDURING FREEDOM and IRAQI FREEDOM. 11 RS pilots and sensor operator training has grown over 300% the past three years with only a 25% increase in training facilities. The 11th RS currently use six Multi-Task Trainers (MTT), located in Building 703, Creech AFB, for MQ-1 Predator formal training. Their use will be discontinued on 31 December 2006. The MTT equipment fills six rooms in building 703 which are currently 20 feet by 18 feet."

"On or about 2 January 2007, the 11th Reconnaissance Squadron plans to remove MTT equipment from their current location and convert the facilities into brief debrief rooms and mission planning facilities. The use of Building 703 to facilitate the growth of our training program has been planned for 6 months and is critical to accomplishing our training mission. If I am not allowed to use my facility on 2 January 2007 to support our mission, the quality of the Predator training will be severely impacted and will measurably affect our ability to produce combat ready aircrew for the operational MQ-1 Predator squadron."

"The MTT equipment is very big and requires considerable secured storage space. Storage space at Creech AFB is extremely limited and I do not have any external or internal facilities which is suitable to store the MQ-1 MTTs after their discontinued use. I am aware that secured storage space is available at Luke Air Force Base."

"I can not overstate the control and use of my faculties, including building 703, on January 2, 2007 is critical to our mission and our nation's global war on terrorism." (Wet signed)

James R. Gear Jr., Lt Col USAF
Commander 11RS 12DEC2006
Notarized State of Nevada County of Clark
On 14th of December 2006
http://www.welaw.org/US/A30_Gear_Affidavit.pdf

James R. Gear Jr. is the Contract Attachment 8 ¶ 1.13 Agency PTSWG representative with delegated authority to request the GFE equipment be moved. At the end of December 2006 FA8621-04-D-6250 ADR Moderator Alan C. Gaudette traveled to Creech AFB, entered with his USAF contract base pass, and held a face-to-face meeting with Lt. Col. James R. Gear Jr. Gear confirmed the equipment was to be moved on or before 02JAN2007 to make four rooms available for mission briefing/debriefing equipment. Four rooms were cleared. There was insufficient room in the secure storage room provided. Overflow equipment was placed in secure storage at Creech AFB in accord with FA8621-04-D-6250 Attachment 8 ¶ 1.5 shown in Items A Page 2 herein and Item B. On 12FEB2007 the competing contract delivery order officer Betty W. Clingerman sent Letter 12FEB2007. The letter did not state Final Decision and did not *inform the contractor of his rights* as required by CDA § 6(a).

ANALYSIS OF LETTER 12FEB2007

The Letter 12FEB2007 does not state it is a CDA § 6(a) Final Decision, states no § 6(a) contractor rights of appeal, and has no 48 C.F.R. § 33.211(v) Notice of Appeal. That letter is not a Final Decision for which the Nevada Court could derive CDA § 6(b) subject matter jurisdiction. ASBCA Rule 4(a) and Rule 4(b) content was provided to the district court:

> "AF letter dated 12 Feb 07 is a [competing contract] CO demand letter to return government property; it is not a CO final decision nor is it a decision on a claim; therefore all references to 48 C.F.R. are not applicable." Signed by author Betty W. Clingerman and received by ASBCA recorder.

The competing contract demand letter states:

> "6. The equipment is to be shipped back to Creech AFB, NV within 30 days of the days of this letter at the contractor expense."

There was no equipment to ship back to Creech AFB. The overflow equipment was at Creech AFB in a storage container waiting for a Notice of Termination for Convenience with contract closeout or a Contract Task 100 Delivery Order. The overflow equipment remained at Creech AFB through 2008. Google Earth Creech AFB photographs show the storage container was moved in Fall 2008.

Clingerman's 2007 CDA § 6(d-e) ADR request non-response violation and violation of 48 C.F.R. § 1.602-1 2007 requests outside and in district court to provide her 48 C.F.R. § 1.603-1 issued SF1402 CO authority evidenced she was not an AFMC/ASC Contracting Officer (CO) and was not the CO of Record for this contract. No appeal was possible.

ANALYSIS OF OPINION / JUDGMENT

Competing contract demand Letter 12FEB2007 states the competing contract requested relief:

> "6. The equipment is to be shipped back to Creech AFB, NV within 30 days of the days of this letter at the contractor expense."

If one were to assume Letter 12FEB2007 was a CDA § 6 Final Decision, which it is not, and upon failure to appeal, P. L. 95-563 amended §6(b) provides the Nevada district court cannot review, interpret, or modify the "Final Decision":

> **CDA § 6(b) Review; performance of contract pending appeal:** "The contracting officer's decision on the claim *shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency*, unless an appeal or suit is timely commenced as authorized by this chapter."

If one were to assume Letter 12FEB2007 was a Final Decision, which it is not, CDA § 6(b) requires judgment entered by the Court Clerk be:

> "The equipment is to be shipped back to Creech AFB, NV within 30 days of the days of this letter at the contractor expense."

The Nevada Court reviewed, interpreted, and modified the letter in violation of CDA § 6(b):

> "... [The] defendant Guy W. Parker is hereby ORDERED to turn over to the United States the hardware described in the complaint." [Unsigned Document 84 Judgment [2]]

The requests in the complaint and the unsigned Nevada Court judgment is not within Letter 12FEB2007 requested relief. A new letter would have to be issued. The Nevada court did/does not have CDA 6(b) jurisdiction.

SUMMARY

Relevance to Question 1:

A bilateral SF30 with Block 14 Intent to Change the Contracting Officer of Record or a mutually negotiated unilateral SF30 with Block 14 Intent to Change in Contracting Officer of Record is required to change the CO of Record's name on the contract:

> **48 C.F.R. § 4.101 Contracting officer's signature**: "Only contracting officers shall sign contracts on behalf of the United States. *The contracting officer's name* and official title shall be typed, stamped, or printed on the contract."

Relevance to Question 2:

The CDA § 6 statute is plain and clear and requires no interpretation. Congress enacted dispute discussion, arbitration, and ADR options exhausted before filing a claim by either party. The only way to create an "end point" to "out of tribunal" dispute discussions is a terminal Final Decision document stating **the** document is the Final Decision and informing the contractor of his rights as stated in the CDA § 6(a) and amplified in 48 C.F.R. § 33.211(v) confirmed required by the United States Court of Appeals for the Federal Circuit in 2004. [E3]

Relevance to Question 3:

The Nevada Judge based his 23SEP2010 Summary Judgment on ASBCA 56742 Declaratory Judgment that competing contract delivery order officer Betty W. Clingerman is the new Contracting Officer of Record for Contract FA8621-04-D-6250 while genuine material facts were in dispute. Congress does not provide ASBCA or USCOFC declaratory judgment authority to change the CDA § 6 48 C.F.R. § 4.101 CO.

CONCLUSION

A CDA contractor is bound by § 6 and 48 C.F.R. § 4.101 to only recognize the Contracting Officer (CO) whose name is typed and signed on the contract.

CDA § 6 (d)-(e) requires a written answer upon request, as was requested, to the CDA § 6 48 C.F.R. § 4.101 CO. ADR a mandatory due to the mutually negotiated Contract Attachment 8 ¶ 1.1.

No statute provides statutory 1978 92 Stat. 2383 (ASBCA) and (USCOFC) CDA declaratory judgment to change the CDA § 6(a) 48 C.F.R. § 4.101 CO.

A contractor has to wait until after the contract performance period to file a Pub. L. 109-364 § 832 120 Stat. 2331 Congressional breach claim. In this contract, accrual date begins 31DEC2008.

The Nevada Court docketed opinion/judgment dates and signatures are bitmaps icons floating above the documents, they are unsigned. The unsigned AG Wavier has no force of law. Petitioner's requested relief is unchanged.

Affirmed this 08OCT2010
by /s/ Guy W. Parker
Guy W. Parker
14924 Conchos Dr. Poway, CA 92064 858-486-6469

Affirmed this 08OCT2010
by /s/ Alan C. Gaudette
16241 W. Hearthstone Dr. Surprise, Arizona 85374

State of Arizona County of Maricopa
Subscribed and sworn before me on Oct 8, 2010
(Date)
Bettye A. Williams
(Notary Signature)

OFFICIAL SEAL
BETTYE A WILLIAMS
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires December 2, 2011

ENDNOTES

E1 41 U.S.C. §§ 601-612 are not positive law and may not be used in courts of law.

E2 A U.S. district court order and judgment A23 P. 14 herein requires a wet signature fixed on the document, even a PDF document is electronically filed. The requirement is the judge print out the document and touch the pen to the order or judgment paper, and scribe his/her signature. The judge or a law clerk would then scan the wet signed document and subsequently file the scanned electronic document using CM/ECF into the court case docket.

In the alternative, the judge may use a digitally certified electronic signature in accord with the creation of PDF documents for electronic document filings. For Case 2:08-cv-1200-LDG-LRL Documents 83 and 84, there are date and signature pictures (bitmap icons) fix above the place where the data and the signature should appear. If you download and view Documents 83 and 84 PDF files on your computer, there appears a date and signature. If a cursor is placed over Documents 83 and 84 with a left click select text, the date and signature pictures "float" above the document and are not fixed into the document. No evidence exists who placed the "floating" bitmap pictures above the document. The dates and signatures on Case 2:08-cv-1200-LDG-LRL Documents 83 and 84 are not wet signatures fixed on the document and the documents remain unsigned. PDF files do provide for digital certified signatures, wherein a cursor click on the signature bitmap icons brings up a digital signature certificate. No digital signature certificates for Documents 83 and 84 exist Documents 83 and 84 remain unsigned.

[E3] *England v. Sherman R. Smoot Corp.*, 388 F.3d 844, 849 (Fed. Cir. 2004) Precedential at: http://www.cafc.uscourts.gov/images/stories/opinions-orders/03-1461.pdf. Page 22 of that case provides:

"However, Congress made it clear in the CDA that any findings of fact by a contracting officer in a final decision are not binding in any subsequent proceeding. .... As set forth in the regulations, a "decision" must include five components: "(i) Description of the claim or dispute; (ii) Reference to the pertinent contract terms; (iii) Statement of the factual areas of agreement and disagreement; (iv) Statement of the contracting officer's decision, with supporting rationale;" and (v) a paragraph advising the contractor of its appeal rights and the requirements for filing an appeal. 48 C.F.R. § 33.211(a)(4) (2000). [FN]7"

"[FN]7[:] The final decision must also include a demand for payment "in all cases where the decision results in a finding that the contractor is indebted to the Government." 48 C.F.R. § 33.211(a)(4)(vi) (2003)."

Also, please refer to Case 2:08-cv-01200-LDG-LRL Document 79 Page 1.

[E4] Letter 12FEB2007: See A24 P. 15 herein.

[E5] Author of Letter 12FEB2007 Statement with ASBCA Recorder filed stamp included within the ASBCA Rule 4(a) and Rule 4(b) Appeals files accepted as evidence. Please refer to the Petition Appendix document A18: Clingerman Signed Statement: http://www.welaw.org/US/A18.pdf.

[E6] See unsigned "NEAL KUMAR KA TY AL" waiver A25 P. 17. http://www.welaw.org/US/A25.pdf.

APPENDIX

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Photo images of the documents are provided at:

A23: http://www.welaw.org/US/A23.pdf.
A24: http://www.welaw.org/US/A24.pdf.
A25: http://www.welaw.org/US/A25.pdf.
A26: http://www.welaw.org/US/A26.pdf.

AFFIDAVIT LT COL JAMES GEAR USAF is at http://www.welaw.org/US/A30_GEAR_AFFIDAVIT.pdf

The Court Clerk letter 17AUG2010 requested Appendix 8.5" x 11" photo documents found within the ASBCA 56742 Government Rule 4(a) Appeal File http://www.welaw.org/US/Rule_4B_File.pdf and ASBCA 56742 Contractor Rule 4(b) Appeal File http://www.welaw.org/US/Rule_4B_File.pdf as well as all photo images of court documents be text replaced. The Appendix 8.5" x 11" documents photos and the full set of contract documents is accessible at http://www.welaw.org/US/index.html.

A23: NEVADA COURT JUDGMENT

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff,

v.

GUY W. PARKER, Defendant.

2:08-cv-1200-LDG-LRL

JUDGMENT

THE COURT HEREBY ORDERS that judgment is hereby ENTERED in favor of the United States on its first claim, and defendant Guy W. Parker is hereby ORDERED to turn over to the United States the hardware described in the complaint.

THE COURT FURTHER ORDERS that the United States' second claim is DISMISSED with prejudice, with each party to bear its own costs and attorney's fees as to the second claim.

DATED this 23 day of September, 2010.

(Floating Bitmap Icon: "23" and
Floating Bitmap Icon: Lloyd D. George
Non-Certified digital impression of a signature)
(No Wet Pen Date or Hand signature)
See Endnote 2 P. 11 herein.

_____

Lloyd D. George
United States District Judge

See http://www.welaw.org/US/NVJudge A.pdf
See http://www.welaw.org/US/NVJudge B.pdf
See http://www.welaw.org/US/NVJudge C.pdf
See http://www.welaw.org/US/NVJudge D.pdf

A24: LETTER 12FEB2007
ASBCA 56742 APPEAL FILE P. 149 EXHIBIT 58

Competing Contract F33657-01-D-2007 D0007 Delivery Order Officer Betty W. Clingerman Letter 12FEB2007:

"1. The referenced contractor reports state that government owned equipment was removed from Creech AFB, NV to the contractor's facilities. It is demanded that this equipment be returned to Creech AFB, NV."

"2. This is government property. The MTTs were purchased by ACC/TRSS Det 1 located at Luke AFB, AZ and have ACC/TRSS Det 1 serial numbers on all the UAV MTT dataplates. Additional Nellis AFB, NV which has inventory responsibility for the MTT equipment located at Creech AFB, NV shows the location of the MTT equipment as Creech AFB, NV in their inventory database. There is no record of an AF Form 601 from Parker International (PI), which is the means by which a contractor sets up an equipment account. Therefore, there is no PI equipment account in the Nellis AFB, NV database."

"3. The government [competing contract delivery order officer] has previously notified the contractor that the MTT hardware on which the MTT software runs, was not provided GFP under contract FA8621-04-D-6250. PI under the terms of the contract had access to the MTTs, the configuration of which was listed in attachment 4 to the contract, erroneously titles "Government Property." DCMA did receive one DD Form 1662 from PI on Oct 05. This is the required annual report from contractors having GFP. Based on

their in-depth review of the contract and the relative documents, it is DCMA's opinion that this DD Form 1662 was submitted in error."

"4. In the alternative, and although the government does not agree, even if the contractor continues to maintain that the equipment was provided as GFP the equipment should be returned. There are no current, funded, or active Delivery Orders on this IDIQ contract and there will be no future delivery orders. Therefore, in accordance with FAR 52.245-2, Contracting Officer requests the government property in the contractor's possession be returned to Creech AFB, NV."

"5. Basically whether PI agreed or not with the [competing contract] government position that there is no GFP on this contract, the MTTs are government property which the contractor has no reason to have in his possession, the government has no current Delivery Order with PI."

6. The equipment is to be shipped back to Creech AFB, NV within 30 days of the days of this letter at the contractor expense.

Wet Signed (hand written signature)
BETTY W. CLINGERMAN
Contracting Officer
ASBCA Recorder filed stamped with date

[Note: FAR 52.245-2 provides the contractor controls the GFE property records. 52.245-1 provides the agency controls the GFE property records. Please refer to 48 C.F.R. 52.245-2 See A26 P. 18 herein.]

A25: WAIVER OF RIGHT TO FILE RESPONSE

IN THE SUPREME COURT OF THE UNITED STATES

PARKER, GUY W., DBA PARKER INTERNATIONAL
Petitioner

vs.

MICHAEL B. DONLEY, SECRETARY OF THE AIR
[The word "FORCE" is not on document]
[The word respondent is not on document]

WAIVER

No: 10-0321

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

[No signature is on this document]
[There are two blanks inserted in "KA TY AL"]
NEAL KUMAR KA TY AL
Acting Solicitor General
Counsel of Record
September 29, 2010
cc:
GUY W. PARKER
14924 CONCHS DR.
POWAY, CA 92064

Sent by the Supreme Court Clerk USPS Mail 09/29/2010. Received by USPS Mail at Parker International 10/02/2010

[This document is not a WAIVER for respondent Secretary of the Air Force filed by NEAL KUMAR KATYAL]. No implied consent is provided.

A26: 48 C.F.R. 52.245-2

52.245-2 Government Property (Fixed-Price Contracts). As prescribed in **45.106(b)(1)**, insert the following clause: Government Property (Fixed-Price Contracts) (June 2003)

45.106 Government property clauses.
This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

45.106 (a) **The contracting officer shall insert the clause at 52.245-1**, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.

45.106 (b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) of this section. 45.102 Policy. (e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105); 45.102 Policy. (f) Require contractors to review and provide justification for retaining Government property not currently in use; 45.105 Records of Government property. (a) **Contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) of this section.**

A27: RELEVANT PUBLIC LAWS (STATUTES)
P. L. 95-563 amended § 6 DECISION BY THE CONTRACTING OFFICER (41 U.S.C. § 605):

(a) Contractor claims: "All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to *the contracting officer* for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by *the contracting officer*. ... The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and *shall inform the contractor of his rights* as provided in this chapter. ..."

(d) Alternative means of dispute resolution: "*Notwithstanding any other provision of this chapter*, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. The contractor shall certify the claim when required to do so as provided under subsection (c)(1) of this section or as otherwise required by law. All provisions of subchapter IV of chapter 5 of title 5 shall apply to such alternative means of dispute resolution."

(e) Termination of authority to engage in alternative means of dispute resolution; savings provision: "In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, *the contracting officer shall provide the contractor with a written explanation* ..."

A28: RELEVANT REGULATIONS

48 C.F.R. § 4.101 Contracting officer's signature: "Only contracting officers shall sign contracts on behalf of the United States. *The contracting officer's name* and official title shall be typed, stamped, or printed on the contract."

48 C.F.R. § 33.211 Contracting officer's decision: "(4)(i) Description of the claim or dispute; 4(ii) *Reference to the pertinent contract terms*; **(4)(v)** *Paragraph substantially as follows:* This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals ..."

48 C.F.R. § 33.212 Contracting officer's duties upon appeal: "To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, *the contracting officer shall provide* data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from *the contracting officer's decision*."

48 C.F.R. § 1.601 General: "*Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603*..."

48 C.F.R. § 1.602-1 Authority: "*(a) Contracting officers may bind the Government only to the extent of the authority delegated to them.* Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. *Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel*."

48 C.F.R. § 1.602-2 Responsibilities: "(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation; (b) *Ensure that contractors receive impartial, fair, and equitable treatment*"

48 C.F.R. § 1.603-3 Appointment: "(a) Contracting officers *shall be appointed in writing on an SF 1402*, Certificate of Appointment, *which shall state any limitations on the scope of authority to be exercised*, other than limitations contained in applicable law or regulation."

48 C.F.R. § 1.603-4 Termination: "*Termination of a contracting officer appointment will be by letter...*"

A29: ADDITIONAL CONTRACT CLAUSES

FA8621-04-D-6250 ATTACHMENT 7 1.1 Conflict Resolution: "... Without the MTTs flight training costs would increase an estimated $1.5 - 2.0M per year. Additionally, the operational duty day at Indian Springs AFAF would increase appreciably, requiring expanded transportation and base operations support, again at increased cost. The MTTs were acquired for a fraction of the cost of a traditional simulator acquisition because that was the best the Air Force could afford at the time. ... Reasonable efforts should be made to resolve controversies through ADR prior to the submission of a claim. *At the request of either party, delays impacting the program or contractor shall be resolved by ADR*.

FA8621-04-D-6250 ATTACHMENT 8 1.13: The 11th RS Commander is the PTSWG government program officer with contract authority to request to GFE equipment moved.